

**(2003) 09 BOM CK 0055**

**In the Bombay High Court**

**Case No : Writ Petition No. 1740 of 1998**

Maharashtra General Kamgar Union

APPELLANT

Vs

Estrella Batteries Ltd. and Others

RESPONDENT

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**Date of Decision : 20-09-2003**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 10, 11, 12  
Industrial Disputes Act, 1947 — Section 10(3), 26  
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 24, 28, 30, 33C, 59

**Citation : (2004) 2 BomCR 617 : (2004) 106 BOMLR 863**

**Hon'ble Judges : R.M.S. Khandeparkar, J**

**Bench : Single Bench**

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## **Judgement**

R.M.S. Khandeparkar, J.—Heard the advocates for the parties and perused the records.

2. The petitioner challenges the award dated 6th March, 1998 passed by the Industrial Court in reference No. 97 of 1988 on three counts : firstly, that the Industrial Court erred in holding that the reference was barred u/s 59 of the M.R.T.U. and P.U.L.P. Act, 1971 (hereinafter called as the said Act), secondly the Industrial Court, erred In holding that the lock-out was not illegal and was not unjustified and thirdly, that the Industrial Court erred in rejecting the contention of the petitioners that in any case, the lockout ceased to be legal or justified subsequent to the order dated 27th January, 1984 Issued by the Government u/s 10(3) of the Industrial Disputes Act, 1947 (hereinafter called as I.D. Act).

3. The petitioner is a Registered Trade Union whereas the respondent No. 2 is the employer of the members of the said union. Sometimes in 1981, the petitioner and respondent No. 1 executed a Settlement dated 14.8.1981 in terms of the provisions of the I.D. Act relating to the bonus payable to the workmen under the provisions of the Bonus Act for the period of 3 years from 1981 to 1983. There was also a charter of demands submitted by the petitioner for revision of wages

which was referred to the adjudication before the Industrial Tribunal under reference No. 192 of 1979 which was to be heard alongwith the earlier reference made pursuant to the notice of change u/s 9A of the I.D. Act being reference No. 148 of 1976. Meanwhile, in or about 1983, another Trade Union by name Kamgar Utkarsh Sabha came to be registered under the Trade Unions Act claiming membership of some of the workmen employed in the undertaking of respondent No. 1, It appears that there was some movement at the instance of the second Trade Union for bonus at the rate different from what was agreed under the Settlement dated 14.8.1981 consequent to which there was no payment of bonus for the year 1983 prior to the expiry of the month of October, 1983, the dissatisfaction sought to have developed amongst the workmen which gave rise to service of notice dated 3rd November, 1983 by respondent No. 1 suspending the operation and further issuance of notice u/s 24(2)(a) of the said Act for the purpose of lock-out to be effective from 17th November, 1983. There was protest against the said decision of the Management by issuance of letter dated 10th November, 1983 by the petitioner followed by the complaint u/s 28 read with Item 6 of Schedule II and Item 10 of Schedule IV of the said Act being complaint No. 801/83. The petitioner therein sought for declaration of the lock-out commenced from 3rd November, 1983 to be illegal and for further direction for payment of full wages from the date of the lock-out. The said complaint came to be dismissed for default on 13th October, 1993. It appears that there was one more complaint filed by Kamgar Utkarsh Sabha being complaint No. 788/ 83. During the pendency of the said two complaints, by an order dated 27th January, 1984, the Government referred the industrial dispute between the Management of respondent No. 1 and their workmen regarding the payment of bonus for the year 1983 for adjudication before the Industrial Tribunal and further by the order of the same date issued directions in terms of Section 10(3) of the I.D. Act prohibiting continuation of lock-out in connection with the dispute referred for adjudication. Lock-out, however, continued. Meanwhile, the respondent No. 1 filed Writ Petition No. 612 of 1984 as well as Writ Petition No. 1844 of 1984 in relation to the said directions u/s 10(3) of I.D. Act, but without any favourable result to the respondent No. 1. It appears that subsequently, the respondent No. 1 and its General Manager were prosecuted for continuation of lock-out in contravention of the said direction and the respondent No. 1 and the General Manager were convicted by the order dated 17th September, 1992 by the Additional Chief Metropolitan Magistrate, Mumbai. Contending that there was no payment of wages to the workmen since October, 1983 the petitioner sought to approach the Government as a result of which and on account of the failure of conciliation proceedings, the matter was referred to adjudication of dispute being reference No. 7 of 1988 wherein the impugned award came to be passed.

4. The Industrial Court by the impugned award has held that in view of the institution of complaints No. 108/83, 788/83 and 795/92 under the said Act, the provisions of Section 59 of the said Act were attracted alongwith Sections 10 and 12 of the C.P.C. and therefore, the reference was barred and not maintainable.

As regards the lock-out, the Industrial Court has held that the same was in compliance with the provisions of Section 24(2) of the said Act and hence legal and further that the evidence safely point out that the situation in the factory was tense because of the union rivalry and that, therefore, there was danger to the life of managerial staff as well as the property of the Company and therefore, the Management was left with no alternative but to declare the lock-out and hence, lock-out was justified. It has been further held that the lock-out could have been lifted by the Management if the workmen had given an undertaking which was asked for and since the workers refused to give the undertaking there was justification for not lifting the lock-out.

5. Placing reliance in the decision in the matter of Billion Plastics Pvt. Ltd. v. Dyes and Chemical Workers" Union and Ors. 1983 (1) L.L.N. 150 : 1983 Mh. L.J. 572 : 1983 (46) F.L.R. 98; Vallabh Das Vs. Madan Lal and Others, . Industrial Tubes Manufacturing Co. Ltd. v. S.R. Samant, Judge, Industrial Court and Ors. 1980 (40) F.L.R. 291 : 1980 (2) L.L.J. 444 : 1980 (1) L.L.N. 595 : 1981 Lab. I.C. 379, Modistone Ltd. v. Modistone Employees" Union and Ors. 2001 (1) C.L.R. 1009 : 2001 (1) L.L.J. 1598 : 2001 L.I.C. 1826, the learned Advocate for the petitioner submitted that the subject matter as well as the cause of action for reference defer from that of the complaint under the said Act, besides being that the scope of the enquiry in the reference includes the issue regarding justifiability of the lock-out whereas the said issue is not open for adjudication in the complaint under the said Act and that, therefore, the Industrial Court erred in holding that the reference was not maintainable or barred u/s 59 of the said Act. The learned Advocate appearing for respondent No. 1, on the other hand, placing reliance in the matter of Mazdoor Congress v. S.A. Patil and Ors. 1993 (1) L.L.N. 525, C.S. Dixit v. Bajaj Tempo Ltd., Pune 2000 (2) C.L.R. 719 and Maharashtra General Kamgar Union, Bombay v. Solid Containers Ltd. and Ors. 1996 (2) L.L.N. 168 : 1996 (1) C.L.R. 106 : 1996 (72) F.L.R. 606 has submitted that the Industrial Court considering the fact that the subject matter of both the proceedings were one and the same has rightly held that the proceedings in reference were barred u/s 59 of the said Act.

6. The contention in relation to non-applicability of bar u/s 59 on behalf of the petitioner is three-fold viz. that the complaint filed by the petitioner was on the basis that the lock-out was illegal under the said Act, and therefore was indulging in unfair labour practice by the respondent No. 1 including Item No. 6 of Schedule II and Item No. 10 of Schedule IV of the said Act and that the justifiability of the lock-out was beyond the scope of the enquiry under the said Act in the said complaint and apart from that, the grievance of the workmen regarding non-justifiability of the lock-out could have been at the most related to Item 9 of Schedule IV under the said Act and. therefore, there was no justification for applying the provision of Section 59 to the matter in hand. At this stage, it is also to be noted that the reference was in relation to the dispute pertaining to the wages and other benefits of the workmen under the service contract for the period from 3.11.1983 till the date of the lifting of the lock-out

and workers were allowed to resume to their duties. The relief prayed in the complaint was to the effect that the lock-out commenced from 3rd November, 1983 was illegal and for direction for payment of full wages to the workmen from the said date of commencement of lock-out viz. from 3rd November, 1983.

7. Section 59 of the said Act reads thus -

Bar of proceedings under Bombay or Central Act.- If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceedings in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act.

8. The plain reading of Section 59 apparently discloses that when any matter falling within the purview of the said Act is made subject matter of any complaint under the said Act, then no proceedings in respect of the same matter either under the I.D. Act or under Bombay Industrial Relations Act, 1946 can be entertained by any Court. Similarly, if any matter falling within the purview of the said Act is made subject matter of a proceeding under the I.D. Act or the Bombay Act then also no proceeding in respect of the same matter can be entertained under the said Act.

9. While ascertaining the scope of bar u/s 59, one important thing which could to be noticed is that there is a significant common factor in two parts of Section 59. While the first part thereof deals with the bar against the proceedings under I.D. Act and the Bombay Act while the other part deals with the bar against the proceedings under the said Act. However, the bar in both the cases relates to the matter falling within the purview of the said Act, irrespective of the forum in which the first proceedings might have been initiated. In other words, while imposing the bar against the second proceedings under different Acts, the subject matter of restriction relates to "any matter falling within the purview of the said Act". Hence, merely because the matter is covered by the provisions of I.D. Act or the Bombay Act that itself has not been made a bar for proceedings under the said Act but the bar is essentially in respect of the matter which falls within the purview of the said Act and the said Act alone, irrespective of whether proceedings are to be initiated under the said Act or under the I.D. Act or Bombay Act. The parameters of restrictions which are imposed u/s 59 are, therefore, clearly defined to be relating to the matters which are covered by the said Act.

10. The question of initiating other proceedings for similar purpose can, arise only when (he relief is available under both the Acts. But, that has not been made the criteria to decide the issue regarding bar u/s 59. On the contrary, it specifically refers to the jurisdiction of the authorities to deal with the issues in

matters arising under the said Act and the said Act alone.

11. The provision contained in Section 59 relates to one of the facets of principle of res judicata. However, it does not include the principle of res judicata in its entirety. Undoubtedly some of the criterias laid down by the Apex Court as well as this Court in understanding the principle of res judicata incorporated u/s 11 of the C.P.C. can certainly be of help while seeking to ascertain the scope of Section 59 and its applicability to the matters like the one in hand.

12. The main object behind the principle of res judicata, as also of the provisions contained in Section 59 of the said Act, is undoubtedly, to give finality to the decision arrived at on adjudication of a dispute between the parties. Undoubtedly, Section 59 speaks of the expression "instituted", while referring to any matter being brought before the Court under the said Act by way of a complaint. Referring to the said expression, it is sought to be contended that even mere institution of the proceedings would be sufficient to warrant the bar to the subsequent proceedings under the said provision of law.

13. It is well settled that a provision of law in a statute cannot be understood ignoring the other provisions in such statute and on the contrary, it is to be understood in the context in which the provision has been made, Section 28 of the said Act prescribes the procedure for dealing with the complaints relating to unfair labour practice filed under the said Act. Sub-section (2) thereof provides that "the Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint". Obviously, when a complaint is filed under the said Act, the Industrial Court or the Labour Court, as the case may be, is expected to decide the complaint in one way or the other, within the specified period under the said provision of law. Sub-section (2) clearly speaks of "decision" on every complaint filed in relation to unfair labour practice under the said Act. The term "decision" contemplates ruling or an order deciding the controversy sought to be raised before the authority or the Court. In other words, it has to be a reasoned opinion of the adjudicating authority in relation to the dispute sought to be raised before such authority. Being so, when a complaint is filed under the said Act making grievance about the unfair labour practice, the Court is expected to dispose of the same by a decision and not merely to reject the same either on account of non-prosecution or on account of default of the party in appearance before the Court. Once the disposal of a complaint in this manner having been contemplated u/s 28, one can understand the intention of the Legislature behind providing the expression "instituted" in Section 59. In other words, moment the proceedings are instituted by filing a complaint under the said Act, the same are required to be concluded by an appropriate decision of the authority under the said Act and it cannot be disposed of merely because the party filing the complaint has shown reluctance to prosecute the complaint. It has to be allowed or dismissed on merits. With this view in mind the Legislature in its wisdom has provided u/s 59 that moment the complaint is instituted, it would warrant the bar for subsequent proceedings in

terms of Section 59. Therefore, mere act of "institution" by itself would not be sufficient to warrant bar u/s 59. It has to be on conclusion of the proceedings with a decision of the Competent Authority to deal with the complaint and not otherwise.

14. The Apex Court in *The Workmen and Others Vs. Hindustan Lever Ltd.*, had clearly observed that, "It is improper to usher in the technical concept of resjudicata pervading the field of civil justice into the field of Industrial Arbitration. But one can safely say that principle analogous to res judicata can be availed of to scuttle any attempt at. raising industrial disputes repeatedly in defiance of operative settlements and awards". In *Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu (Dead) by L. Rs.*, it was clearly ruled that the object behind the principle of res judicata is to have an end to the litigation and to give finality to the concluded adjudication of the Court because if there is no finality to it, the dispute cannot be said to be really decided at all.

15. It was ruled in *Richpal Singh and Others Vs. Dalip*, that the salutary and simple test to be applied to determine whether the previous proceedings would bar subsequent one is to find out whether the Court in the first proceedings could go into the issue sought to be raised in the second proceedings and if the answer is in the negative, then there is no question of bar to the second proceedings. The another test as was held by the Apex Court in *Jaswant Singh and Another Vs. Custodian of Evacuee Property, New Delhi*, could be to ascertain whether the claim in the subsequent proceedings is in fact, founded upon the same cause of action which was the foundation of the former proceedings. It was also warned in *S.S. Miranda Ltd. v. Rangbahadur Singh and Anr.* 1998 (2) C.L.R. 277 : 1998 (3) L.L.N. 1005 : 1998 (80) F.L.R. 143 that the provision regarding ouster cannot be interpreted so as to let the party remediless.

16. As already observed above, Section 59 specifically refers to "any matter falling within the purview of this Act". Undoubtedly, therefore, when the matter falling within the purview of the said Act is made subject matter of the complaint, the same cannot be agitated again in subsequent proceedings instituted either under the I.D. Act or under the Bombay Act. But that would not debar the party from agitating any issue which was not within the purview of the said Act, but even though it may arise from same cause of action. It is so because a cause of action is a bundle of facts which entitle the party to seek relief. The facts which may entitle a party to seek the relief under the said Act may create hurdle to the party seeking further proceedings under I.D. Act or Bombay Act to seek the same relief on the same facts and in relation to the same subject matter, but if the same relief is available on additional facts which can constitute a cause of action for the proceedings under I.D. Act or Bombay Act but not under the said Act, in such a case subsequent proceedings cannot be said to be totally barred u/s 59 of the said Act.

17. It is pertinent to note that in case of complaint of unfair labour practice

relating to lock-out, the issue pertaining to justifiability thereof is totally beyond the jurisdiction of the Court dealing with the complaint under the said Act, whereas such an issue is of utmost importance while dealing with the matter under I.D. Act. Being so, the complaint relating to lock-out alleging the same to be illegal filed by the party under the said Act could be adjudicated within the parameters of the provisions of the said Act which do not permit consideration of the issue of justifiability of such lockout whereas such an issue can be raised and adjudicated in reference. Undoubtedly, in such a case an adjudication on a point, culminated in a finding under the said Act and when same point is sought to be reagitated in the subsequent proceedings before the Court in the proceedings under I.D. Act or Bombay Act, then the same to the extent of the adjudication thereof was permissible under the said Act, would be final and binding on the parties to such proceedings and would operate as bar in such subsequent proceedings in view of the provisions of Section 59 of the said Act. In *Jai Kishan Dass and Others Vs. Smt Nirmala Devi and Others*, the plaintiffs had filed suit for declaration that they were members of joint family and were entitled to share in joint family business and properties. Finding in the earlier litigation between the parties and their predecessors was that there was disruption of larger joint Hindu family as a result whereof the five brothers had separated from each other and the family business was carried on by them as partners while remaining as heads of each one's individual joint family. It was held that such a finding could operate as res judicator the suit filed for declaration. Some principle would apply in case of findings arrived at by the Court while dealing with a complaint under the said Act, albeit the findings should be in relation to the matters within the purview of the said Act.

18. The Apex Court in *Vallabh Das (supra)* case while approving the decision of this Court in *Rukma Bai v. Mahadeo Narayan* AIR 1917 Bom. 10 : 20 Bom. L.R. 35 had held that mere identity of some of the issues in the two suits do not bring about an identity of the subject matter in the two suits and the subject matter means the bundle of facts which have to be proved in order to entitle the plaintiff to the relief claimed by him.

19. The Full Bench of this Court in *C.S. Dixit (supra)* case while dealing with the matter on reference on account of difference in opinion between the two Benches of this Court in *Maharashtra State Road Transport Corporation v. Yadao & etc.* 1985 Lab.I.C. 1012 : 1985 (2) L.L.N. 322 and *Shivaji Agricultural College, Amravati v. Mukhtar Ahmed S/o. Haji Mian Sheikh and Anr.* 1987 M.L.J. 646 and after taking note of two other decisions namely *Consolidated Pneumatic Tool Company (India) Ltd. Vs. R.A. Gadekar and Others*, as well as *S.S. Miranda Ltd. v. Rangbahadur Singh and Ors.* 1998 (2) C.L.R. 277 : 1998 (3) L.L.N. 1005 : 1998 (80) F.L.R. 143 had ruled that the decision in *Mukhtyar Ahmed's* case does not lay down the correct law. In *Mukhtyar Ahmed* case, it was held that Section 59 cannot be assumed to be based only on principle of res judicata and that therefore, once the choice is made and matter is presented, the other remedy is lost. In *Yadao's* case while referring to Section 59 of the said Act and Sections

10 and 11 of the C.P.C. it was held that the former is akin to the later and same enjoins upon the Court not to proceed with the trial of the suit where similar issues were directly and substantially in issue in another suit. It was further noted that legislative intention was to prevent multiplicity of proceedings, possibility of contradictory verdict and wastage of judicial time and it was in consonance with public policy. Further, while agreeing with the observations of the learned Single Judge, who had sought to refer the case to the Full Bench, to the effect that the underlying legislative policy was of discouraging the multiplicity of proceedings and therefore, the bar intended was only to shut out a party who had resorted to a remedy and failed therein and that if the remedy has been refused on the ground of non-maintainability, it was inconceivable that the party can be shut out by successfully invoking the bar u/s 59, it was further ruled that mere filing of the complaint under the said Act without anything done in the matter will not attract the bar u/s 59.

20. In *Solid Containers (supra)* case, after taking note of various provisions of the said Act as well as of the I.D. Act and the rulings in *Premier Automobiles Ltd. and Ors. v. G.R. Sapre and Anr.* 1980 (1) L.L.N. 116 : 1981 Lab. I.C. 221 *Maharashtra General Kamgar Union and Ors. v. Balkrishna Pen (Private) Ltd. and Ors.* 1988 (1) L.L.N. 287 : 1987 (2) C.L.R. 374 : 1988 (56) F.L.R. 81 : 1989 (1) L.L.J. 319 : 1988 Mh. L.J. 382, *Syndicate Bank and Anr. v. K. Umesh Nayak* 1994 (2) L.L.N. 1296 *Billion Plastics (Private) Ltd. v. Dyes and Chemical Workers Union and Ors.* 1983 (1) L.L.N. 150 : 1983 Mh.L.J. 572 : 1983 (46) F.L.R. 98 and *Mazdoor Congress v. S.A. Patil and Ors.* 1993 (1) L.L.N. 525 it was observed that the said decisions make it abundantly clear that as far as proceedings under the M.R.T.U. and P.U.L.P. Act, 1971 are concerned, the Court is only required to decide whether the strike or lock-out is illegal or otherwise as contemplated under the Act. The Court is not called upon to adjudicate upon the justifiability of otherwise of the strike or lock-outs.

21. In *Modistone Ltd. (supra)*, the Division Bench of this Court, likewise after taking note of various provisions of the said Act as well as the various decisions held that while deciding the complaint under the provisions of the said Act, the Industrial Court : (a) can decide whether the lock-out is legal or illegal i.e. whether it is in accordance with the provisions of the M.R.T.U. & P.U.L.P. Act, 1971; (b) can decide whether the reasons stated in the notice of lock-out are non-existent or sham or irrelevant i.e. not germane to the employer-employee relationship or not relating to the industrial relationship; (c) however, it cannot go into the question of sufficiency or adequacy of the reasons; (d) the Industrial Court cannot go into the question whether the lock-out is justified. This question can only be agitated before the Appropriate Court under the provisions of the Industrial Disputes Act, 1947.

22. In *Billion Plastics (supra)* case, the learned Single Judge of this Court held that while deciding the question of unfair labour practice, what the Court has to see is whether the strike is deemed to be illegal under the Act or not, and the



Court cannot adjudicate upon its justifiability or propriety. The said area is not covered by Section 30 of the said Act, which confers a limited power upon the Courts to deal with the complaints regarding unfair labour practice, and that if a particular controversy is not triable within the purview of the Act, then the jurisdiction of the Court referred to in Section 59 or Section 60 of the said Act is not barred.

23. In *All India Labour Union v. M/s. Jeewanlal (1929) Ltd. and Anr. (1929) Ltd.* and *Anr. 1986 (2) C.L.R. 296 : 1986 (2) L.L.N. 671 : 1986 (53) F.L.R. 481* it was held that, the words "any proceedings" and "any" have to be understood in the context of the qualifying expression which is "falling within the purview of this Act". The proceeding under the Industrial Disputes Act questioning the validity of the notice proposing to effect a change, would amount to taking exception to the very idea of the employer desiring to effect a reduction in the wages of the workers, while in the complaint under the said Act, the aim would be to struck down the reduction pursuant to the notice already given. Similarly, in *Yadeo's* case, it was observed that, the bar u/s 59 of the said Act is not an absolute one not impervious, impregnable wall to all manner of sorts of proceedings but a sieve through which certain type of proceedings can permeate and it only prohibits duplicating of proceedings if some, in respect of matter which falls within the purview of the said Act, are already pending under the I.D. Act.

24. In *Prabhat Enlarging Works, Nagpurv. Prabhakar Antaram Ji Bagmare and Ors. 1985 Lab. I.C. 1185* an application came to be filed under the said Act before the Industrial Court for declaration of an "illegal strike". It was held that the question as to whether the employees were skilled workers or not was not at all germane to the said proceedings and therefore, the bar u/s 59 of the said Act could not operate so as to affect the jurisdiction of the Labour Court to entertain the application u/s 33C(2) of the Industrial Disputes Act. Similarly, following the decision in *Billion Plastics* case, the learned Single Judge in *Mazdoor Congress (supra)* case had rejected the contention regarding bar of Section 59 of the said Act in the facts of that case.

25. Reverting to the facts of the case in hand, as already observed above, the complaint by the petitioner under the said Act was in relation to Item 6 of Schedule II and Item 10 of Schedule IV, alleging commencement of illegal lockout on 3rd November, 1983 and demanding payment of full wages for the period from the commencement of the said lock-out. Item 6 of Schedule II relates to proposing or continuing a lock-out deemed to be illegal under the said Act whereas Clause 10 of Schedule IV speaks of indulging in act of force or violence. Section 24(2) of the said Act enumerates the list of instances when a lock-out can be called as an illegal lock-out under the said Act. Undoubtedly, therefore, a complaint making grievance of indulgence of unfair labour practice on account of the pronouncement or continuation of lock-out would be covered by Item 6 of Schedule II and Item 10 of Schedule IV of the said Act. The Industrial Court therein will have to decide the issue pertaining to the legality or

illegality of the lock-out. However, the jurisdiction of the Industrial Court does not extend to deal with the issue regarding justifiability of the lock-out which essentially falls within the scope of the powers of the Court dealing with the reference pursuant to the dispute raised by the parties in that regard. Undoubtedly, therefore, the decision if any, of the Court regarding legality or illegality on a complaint filed by the union can operate as bar for adjudication of the said issue under the I, D. Act if the reference is made subsequent to the decision of the Court in such a complaint.

26. At this stage, it was sought to be contended on behalf of the petitioner that even such a decision cannot create a bar u/s 59 on the ground that a lock-out which is illegal under the provisions of the said Act may not be illegal under the provisions of the I.D. Act and provisions regarding the legality or illegality of the lock-out are not similar in both the statutes. Considering the provisions of both statutes relating to the issue of lock-out I am afraid, it is difficult to accept the contention on behalf of the petitioner in this regard. In the circumstances, once the party approaches the Court under the said Act making grievance about the unfair labour practice in relation to the lock-out alleging the same to be illegal and on adjudication of the said complaint, the Court arrives at the conclusion about legality or illegality under the said Act, such a finding has to be construed as res judicata between the parties even in subsequent proceedings if instituted within the same parties under the I.D. Act after the conclusion of such proceedings under the said Act.

27. The learned Advocate for the petitioner is, however, justified in contending that the proceedings which are subsequently initiated being reference of the dispute between the parties can at the most relate to the issue of implementation of the settlement or agreement between the parties and it can at the most fall under Item 9 of Schedule IV. Certainly, there was no complaint in that regard by the petitioner in the proceedings No. 801/83.

28. The fall out of the above discussion on the point of bar u/s 59 of the said Act to the case in hand is that the finding of the Industrial Court in relation to the complaint No. 801/83 is not borne out from the record, nor it is in accordance with the provisions of law and hence cannot be sustained. It is to be held that irrespective of the complaint No. 801/83 the reference was maintainable in entirety for the reason that the said complaint was dismissed for default without adjudicating any issue therein and therefore, there was no finality whatsoever arrived at to the controversy which was sought to be raised even in the said complaint by the petitioner.

29. As regards two other complaints viz. complaint Nos. 788/83 and 795/92, they were admittedly filed by Kamgar Utkarsh Sabha and Shramik Utkarsh Sabha respectively. Neither the Industrial Court In the impugned award nor the learned Advocate appearing for the respondents has been able to point out as to how the complaints filed by other unions can entitle the respondent No. 1 to raise contention regarding the bar u/s 59 of the said Act, apart from the fact that

there is nothing on record to disclose that the said complaints were finally adjudicated and any finding was arrived at about illegality of the lock-out so as to apply the same decision to the members of the petitioner-union. The finding of the Industrial Court in relation to complaint No. 788/83 as well as 795/92 is, therefore, also not sustainable and is liable to be set aside.

30. The second point for consideration which arises in the matter is whether the finding of the Industrial Court on the point of illegality of the lock-out and justifiability in clamping the lock-out is borne out from the record. In this regard, while dealing with the issue of justifiability, the Industrial Court has referred to the testimonies of the witnesses and has held that there were several violent incidents from July, 1983 onwards, apart from the go-slow tactics, stop deliveries, in discipline violent activities because of rivalry amongst the unions etc. were experienced by the Management. Reference is made to the incident of 1st November, 1983 wherein the police were also required to be called by the Company on account of the violent activities on the part of the workmen. Reference is also made to the apprehension which was expressed by the Manager about worries of the Management regarding the safety of the property and their management staff on account of the violent activities on the part of the workmen and that the violent activities were continued which rendered it difficult for the Management to run the factory and that therefore, the lockout was justified. It has also been observed that appropriate notice regarding lock-out was issued and a lock-out commenced after the period of 14 days from the date of the notice of lock-out. Considering these findings, though they are primarily relating to justifiability of the lock-out also disclose that the Industrial Court had taken Into consideration the aspect of the legality or otherwise of the lock-out and considering the situation which was faced by the Management disclosed from the materials on record, the Industrial Court has held that the pronouncement of the lock-out was legal and it was justifiable. The finding in that regard arrived at by the Industrial Court on the assessment of material on record cannot be said to be perverse or not borne out from the record merely because any other opinion may be possible on the reassessment of the evidence and the same cannot be a justification for interference in writ jurisdiction. The contentions in this regard sought to be raised on behalf of the petitioner are, therefore, to be rejected.

31. The third point for consideration which arises Is whether the lockout which had commenced from 3rd November, 1983 as legal and justifiable, ceased to be legal and justifiable subsequent to the order dated 27th January, 1984 or any time thereafter. The Industrial Court in that regard has held that the atmosphere in the factory premises was not suitable to lift the lock-out.

32. Undisputedly, by order dated 27th January, 1984 issued u/s 10(3) of the I.D. Act, the Government had prohibited continuance of lockout in connection with the dispute which was referred to the Tribunal for adjudication. The dispute which was referred to the Tribunal for adjudication was regarding the payment of bonus for the year 1983. It is also undisputed fact that on account of

continuation of the lock-out even after the said order, the respondent No. 1 Company and its General Manager were prosecuted in case No. 775/SL/85 in the Court of Metropolitan Magistrate, Mumbai and they were convicted u/s 26(2) of the I.D. Act. It is a matter of record that the respondent No. 1 has sought to challenge the said direction issued u/s 10(3) of the I.D. Act by way of Writ Petition Nos. 612/84 and 1844/84 but the same was without any success. Being so, the fact of continuation of lock-out in violation of the order u/s 10(3) of the I.D. Act is clearly established.

33. It is sought to be contended on behalf of respondent No. 1 that the direction u/s 10(3) of the I.D. Act prohibiting the continuation of lockout was in connection with the dispute which was referred for adjudication and the same pertained to the demand of bonus for the year 1983. It is, however, to be noted that the lock-out which had commenced from 3rd November, 1983 was primarily on account of the dispute arising on account of non-payment of the bonus for the year 1983 before the expiry of the month of October, 1983. In other words, the dispute which was referred for adjudication was also on account of the disturbance of industrial peace in the factory warranting clamping of lock-out by respondent No. 1. Undoubtedly, the reference under consideration was referred in the year 1988 and it pertained to the issue of claim of full back wages and other benefits under the services contract and since the lock-out i.e. with effect from 3rd November, 1983. In fact, the schedule of reference under order dated 31st October, 1988 read thus -

The Management of M/s. Estrella Batteries Ltd. should pay to the workmen full wages and other benefits under the service contract for the period of illegal and unjustified lock-out with effect from 3.11.1983 till the said illegal and unjustified lock-out is lifted and the workmen are allowed to resume duties.

34. The lock-out which was continued even after the reference under order dated 31st October, 1988 had commenced from 3rd November, 1983. Initially, having been declared pursuant to the disturbance resulting from non-payment of the bonus in October, 1983 and thereafter disturbance continued on account of non-payment of wages from 3rd November, 1983, the day on which the lock-out was clamped.

35. The respondent No. 2 however, has raised another defence in the matter of continuation of lock-out and that is the failure on the part of the workmen to give undertaking asked for. Indeed, the Industrial Court in the impugned award has held that "the workmen refused to give the undertaking and in the result Company declared the lock-out and that had the workmen given the undertaking for not falling themselves in violent activities in the premises and to give normal production, the Company could not have taken precautionary steps on declaring lock-out in the factory and Company has rightly asked the employees to give undertaking which they failed to give and therefore, the Company had declared the lockout." Though the Industrial Court passed an award about declaration of the lock-out pursuant of the failure on the part of the workmen to give

undertaking, obviously it refers to continuation of lock-out as there is nothing on record to disclose that after 3rd November, 1983 at any point of time the lock-out was lifted by the respondent No. 1. In fact, the lock-Bom. L.R. 253 out which had commenced on 3rd November, 1983, had continued throughout.

36. Undoubtedly, it was for the respondent No. 1 to justify the need for continuation of lock-out even after 27th January, 1984. On behalf of respondent No. 1, it is sought to be contended that the continued violent incidents and uncooperative attitude on the part of the workmen as well as refusal to give undertaking for not involving themselves in any violent activities and promising to give normal production were the causes and justification for continuation of the lock-out. According to the respondent No. 1 the fact that in the complaints filed at the instance of the Management, there was direction to the union and its members not to cause disturbance in the factory premises itself justified instances on the part of the Management for undertaking from the workmen and the refusal thereof clearly justified the continuation of the lock-out. On the other hand, it is sought to be contended on behalf of the petitioner that the materials on record do not warrant any finding in that regard in favour of the Management and the findings which have been arrived at by the Industrial Court are totally perverse. On behalf of the petitioner, reliance is sought to be placed in the decision in the matter of Crompton Greaves Ltd. Vs. Its Workmen, ; Vamen Maruty Gharat and Others Vs. M.S. Apte and Others, and Metal Box India Limited Vs. Association of Engineering Workers Union and Others, whereas on behalf of respondent No. 1 reliance is placed in the decision of the Division Bench of this Court in the matter of Industrial Tubes Manufacturing Co. Ltd. v. S.R. Samant and Anr. 1981 Lab. I.C. 379 : 1980 (40) F.L.R. 291 : 1980 (I) L.L.N. 595.

37. As already observed above, the finding of the Industrial Court in respect of justification for continuation of lock-out is the continued acts of violence and threats by the workmen to the Management and the refusal on the part of the workmen to give undertaking asked for. However, perusal of the impugned award, disclose that the same nowhere refers to any specific incidence of act of violence or threat by the workmen to the Management in or after January, 1984. So also, as regards the undertaking, the impugned award nowhere refers to the details about the contents of the undertaking or particulars regarding the communication between the Management and the union in relation to the demand for the undertaking. Being so, it would be necessary to peruse the records to ascertain whether the findings arrived at in relation to continued violent activities or threats and refusal to give undertaking are really borne out from the record or not, before arriving at any decision in relation to the point under consideration.

38. As far as the evidence produced on behalf of the petitioners is concerned, undoubtedly, the same is of no help to ascertain whether there was any instance of any act of violence or threat to the Management in or about January, 1984. On the part of the respondent No. 1, they had examined three witnesses viz. Om

Prakash Agarwal, Himmatlal R. Jain and K.S. Anant Iyer. Testimony of Om Prakash Agarwal discloses the fact of gherao by the workmen on 1st November, 1983, issuance of order dated 30th August, 1983 and 16th September, 1987 in complaint (ULP) No. 502/83, the fact of addressing letters to the Dy. Commissioner of Police and Inspector of Police on 2.11.1983 and 8.11.1983 respectively as well as letters dated 12.3.1984 and 26.3.1984 addressed to the police station, Andheri. The testimony of Himmatlal Jain discloses the situation as on 1st November, 1983 and that from July, 1983 to 3rd November, 1983 on many occasions police were to be called in the factory premises. Further that he had met even the Minister of State for Labour for resolving the issue of lockout but without any fruitful outcome. He has further stated that he had approached the Minister of Industry and Labour in 1988 and the latter was requested to intervene in the matter for resolving the issue of deadlock but the same could not yield any fruitful result on account of failure on the part of the union to give the undertakings. K.S. Anant Iyer has stated that in December, 1986 while he was working as Executive Secretary to B.K. Tapariya, 200 workmen barged into the office shouting slogans and abuses and they had ransacked some of the office furniture and the said morcha was led by Shramik Utkarsh Sabha and police were called and peace was restored after the period of two hours. In the cross, however, he has stated that he had been working for respondent No. 1 since December, 1988 but even prior to that he was connected with the respondent No. 1 as he was working in the office of Mr. Bharatkumar Tapariya who was Director of respondent No. 1 until November, 1983. The testimonies of these three witnesses, therefore, apart from the incident in December, 1986 nowhere discloses any particular incident of violence or unruly behaviour on the part of the workmen in or around the factory premises from January, 1984 onwards. The incident of December, 1986 which has been narrated by Mr. Iyer also relates to the members of Shramik Utkarsh Sabha and not of the petitioner union. Besides it is not known what action was taken against the alleged incident of December, 1986 consequent to ransacking of the office furniture by the members of Shramik Utkarsh Sabha as also on account of their acts of shouting slogans and abuses and that too inspite of the injunction order of the Court as has been stated by the witness. In other words, there is no cogent material and evidence placed on record to arrive at the conclusion that the situation in or around the factory premises was of such a nature that it was not possible for the Management to lift the lockout.

39. The second limb of argument in this regard relates to refusal on the part of the workmen to give the undertaking. In that regard, the witness Mr. Agarwal has stated that, "Some undertaking were discussed by Mr. H.R. Jain with Dr. Datta Samant about discipline. But I have no personal knowledge about it. It is true that Mr. Jain being the President of the Company had personal knowledge about the lock-out." He has further deposed that, "Mr. Jain and Mr. Taparia were responsible for day-to-day activities of the Company in November, 1983." The witness H.R. Jain in relation to the undertaking has stated that the respondent

No. 1 had requested for undertaking from the workmen that in future they would not involve themselves for violent activities. They would avoid the go-slow activities and they would obey the Management so that optimum production could be achieved. He had clarified that by optimum production they meant the same to be as per agreement they had entered with Dr. Datta Samant in 1981. He has deposed that "We have desired the undertaking from the workmen in the format they choose so that the same can be shown to the Banks and the Financial Institutions for their continued support. Both the unions were not prepared to give such undertaking as they considered themselves they are standard unions and any such undertaking will spoil their fair name in the workmen's community." He has further stated that they had not sent the copies of the undertaking to the workmen and that they had not finalised any format of the undertaking by consultation with the union. The exact statement in that regard is "We have not finalised such formats of undertakings, by sitting with any of the union members. It is true that the test or form of the undertaking is not placed in the present proceedings." The witness Mr. Iyer in this regard had stated that the Company had asked the workmen to give an undertaking as precondition of lifting the lock-out but he had no idea when such undertaking was sought for as well as format thereof. The testimonies of these three witnesses in relation to the undertaking which the respondent No. 1 had expected from the workmen and which was refused by the workmen, reveal that undertaking was essentially asked for two reasons : firstly, as a precondition for lifting the lock-out and secondly, to show the same to the Bankers and Financial Institutions for their support. In other words, it is not the case of the respondent No. 1 that the situation in the factory premises was of such a nature that in the absence of the assurance and promises in the form of undertaking by the workmen, they were unable to lift the lock-out. On the contrary, it was merely as a pre-condition for lifting the lock-out that there was insistence on the part of the Management for execution of the undertaking by the workmen. It is not the case of the respondent No. 1 that the acts of violence or unruly behaviour on the part of the workmen had continued after January, 1984 and they were to such an extent that in the absence of assurance by the workmen to maintain the peace, the Management was unable to lift the lock out. Apparently, it. was merely a face saving device and to deny the right to the workmen for the wages for the period during which the lock-out had continued after January, 1984 that the Management was insisting for the undertaking from the workmen. Secondly, it was admittedly for the purpose of forwarding the same to the Financial Institutions for their support to respondent No. 1. The evidence on record, therefore, as regards the justification for insistence of the undertaking by the workmen is restricted to mere desire on the part of the Management to have such undertaking and to enable the Management to forward the same to the Financial Institutions and not because the situation in the factory premises warranted any such undertaking from the workmen.

40. Added to the above facts. It is also to be noted that witness Mr. Agarwal in

his testimony has clearly admitted, apart from the documentary evidence produced on record by the petitioner, that the Government of Maharashtra had declared the lock-out to be illegal and even the witness was fined for Rs. 300/- by the Metropolitan Magistrate in relation to continuance of the lock-out.

41. Added to what is stated above, admittedly, even the format of undertaking was not finalised with the discussion with the union of the workmen. All these facts obviously disclose that the issue of undertaking was sought to be raised as mere pretence for continuation of lock-out and not because it really warranted on account of the conduct on the part of the workmen.

42. In Vaman Maruty Gharat's case, Shri P.B. Sawant, J. (as he then was) while dealing with the issue relating to unfair labour practice on the part of the Management in insisting the undertaking from the workmen as a pre-condition to allow the workmen to perform their duties in an undertaking in which he is employed and even where the employer succeeds in proving certain acts of violence and indiscipline on the part of the workmen including damage to the property of the employer, had observed thus, "Assuming however that the employer has succeeded in proving that there were acts of violence, indiscipline and damage to the property, the question that still falls for consideration is whether insistence on such an undertaking from all workmen, whether they were parties to the said acts or not, is justified. Surely in the last quarter of this century it is not necessary to emphasise that the contract of employment is always bilateral. The employer and employees are equal partners in the enterprise of production. The employees are no longer to be looked upon as bonded slaves. The terms of their relationship with the employer are governed by the contract of employment and/or the relevant statutes. The employees therefore cannot be treated as a tribe of delinquents much less can they be humiliated by asking them to sign undertakings which imply that they had indulged in misdeeds which they had not and that they atone for the same." Further observing that in a given case the employer may be justified in insisting for such undertaking from those workmen who are guilty of misdeeds, it was held by Sawant, J., that no insist on such undertaking from one and all is to subtract from the terms of their employment besides being any provision for such undertaking in the terms of employment. It was further held that "to contend that to act in a disciplined manner is an implied condition of service and hence there is nothing wrong to insist upon such undertaking, is to beg the question. If it is an implied condition of service, there is no need of such undertaking. If the undertaking is innocuous, it serves no purpose except satisfying the ego of the employer which is nothing but a display of a feudalistic attitude towards the employees. Such attitude has to be discouraged in any egalitarian society and much more so in a society like ours which has pledged itself to establish a Socialist Republic." It was further held that "The individual is the bed rock of all human rights. It is and should be the basis of all human relationship including his contract of employment. To insist upon such undertaking therefore is to affect the terms of his employment.



43. In *The Statesman Ltd. Vs. Their Workmen*, the Apex Court was dealing with the matter wherein the employer had declared the lock-out consequent to declaration of the strike to be illegal and the Management had put up a notice stating that it had no option but to adopt a closure unless a normal and peaceful work was assured. However, inspite of the necessary assurance in that regard by the union on behalf of its members, the Management decided to the effect that the steps to lift the closure could be taken only after the Management is reasonably convinced that discipline and the normal production would be maintained and that there would be no recurrence of the acts of indiscipline which led to the illegal strike. In a proceeding before the Tribunal, the Management were directed to pay half of the wages due to the employees and the award in that regard came to be challenged and the matter appeared before the Apex Court. It was held that even if the lock-out which was initially imposed was lawful, having regard to the fact that it was a sequel to an illegal strike, the action of the employer in refusing to restart the work despite the assurance given to maintain peace and normal work was not justified and that where the strike is illegal and the sequel of a lock-out legal, the Court has to view the whole course of developments and to stop with examining the initial legitimacy. It was, however, held that "But the Management cannot behave unreasonable merely because the lock-out is born lawfully. If by subsequent conduct, imaginatively interpreted, the Unions have shown readiness to resume work peacefully, the refusal to restart the industry is not right and the initial legitimacy of the lock-out loses its virtue by this blemished sequel....

44. The learned Single Judge of this Court in *Metal Box India's* (supra) case dealing with the matter wherein an undertaking which was expected from the workmen about the admission that the workmen had struck work and the Company had suspended operations in response to their having struck work, it was held that the same was impermissible because it precluded the workmen from agitating their claims and rights before a Court of competent jurisdiction and secondly, what the undertaking required was that the workmen should admit that the period during which the Company had suspended its operations, shall be on a no-work no-pay basis and the workmen were thus, required to agree to a waiver of their right to receive wages during the period during which the Company suspended its operations. Besides that, irrespective of whether or not the workman concerned was ready and willing to offer himself for work, he was denied wages merely because his colleagues had never worked. The undertaking required the workman to state that he was not engaged in illegal or indiscipline activities and that he would not band together with a group of workmen. Referring to the facts of the case, it was observed that evidence and materials on record clearly disclosed that the conduct of the employer was blameworthy and prevented the workmen from reporting for work and considering the facts in totality, the insistence for undertaking from the workmen and refusal on that count for lifting of the lock-out was held to be not justified and therefore, the Management were directed to pay 50% of the backwages to the workmen for the

relevant period. While arriving at the said decision, the learned Single Judge had also referred to the decision of the Gujarat High Court in *Swastik Textiles v. Rajansingh Santsingh and Ors.* 1984 (III) L.L.J. 1997 wherein an undertaking was sought from the workmen to the effect that they had joined an illegal strike and they would act peacefully and in a disciplined manner and shall not commit any similar or other misconduct. The Division Bench of Gujarat High Court had held that requiring the workers to admit that they had participated in an illegal strike and to furnish an assurance of not participating in such a strike in future and seeking pardon of the Company was unjustified in the circumstances of the case and it was noted that even if it was open to the employer to take disciplinary proceedings against the workmen for participating in the strike, by demanding such a writing, what in effect and substance the employer was proposing to do was to hold the workmen guilty and impose punishment upon them without even framing any charge or holding an inquiry.

45. The Division Bench of this Court in *S.R. Samant's* case had held that the instances of execution by the employees of good conduct bond were not without precedent and in that regard, reference was made to the decision in the matter of *Engineering Mazdoor Sabha and Others Vs. S. Taki Belgrami and Another*, and *Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory*, and it was observed that "in both these cases, the employers were driven to ask for such bond in view of the continued "go-slow tactics" and obstruction to production." It was also held that the Court could not find any fault with the employers and consequently, refusal to take them on work was upheld by the Court and therefore, the employer was held to be justified on insisting on the bond in the circumstances which were established. Apparently, the observations by Division Bench in *S.R. Samant's* case were based on the facts of the case wherein the situation on account of acts of the workmen had compelled the employer to insist for the execution of bond of good conduct by the workmen.

46. In *Vaman Maruty Gharat's* (supra) case, on account of difference of opinion between the members of Bench, the matter was placed for consideration before the 3rd Judge and *Shri R.A. Jahagirdar, J.*, while dealing with the matter while agreeing with the view expressed by *Shri P.B. Sawant, J.* had placed reliance in the decision of the Division Bench in *S.R. Samant's* case and had taken note of the clear finding of the Division Bench in that regard to the effect that, "this must, however, be borne in mind that the dividing line between justified and unjustified insistence on such bond is very thin. The Court has to scrupulously guard against the danger of this being abused making it a just a pretext for coercing workmen to give up their just struggle with legitimate means. "Further, while agreeing with the views expressed by Justice Sawant, it was held that if the undertaking required from the employee is merely to say that he was calling of the strike which had to be held to be illegal, one would not be able to complain about the same but if it includes the confession on the part of the employee regarding the illegality of the strike or any violent acts on the part of the employees then it may not be permissible to insist upon such undertaking.

47. In *Crompton Greaves Ltd. (supra)* case, the Apex Court had held that it is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. The strike is legal if it does not violate any provisions of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period. These observations applied on all counts to the cases where lock-out is declared by the employer. Whether particular lockout is justified or not is essentially a question of fact to be judged in the light of the facts and circumstances brought on record by the parties while primarily, it being for the employer to justify the same.

48. Considering the law on the point and the facts of the case in hand, the findings arrived at by the Industrial Court on the point of legality as well as justifiability for the continuation of lock-out after 27th January, 1984 cannot be sustained and are liable to be set aside as the findings are totally contrary to the materials on record. As already stated above, the records nowhere disclose lock-out after 27th January, 1984 to be legal and further, the materials nowhere disclose the same was in any manner justifiable. The insistence for undertaking was not bona/fide and genuine, nor the materials justify in any manner the insistence for such undertaking, besides being the fact that even the format of undertaking was not decided with the prior discussion with the employees.

49. For the reasons stated above, the impugned award as far as it declares the commencement of the lock-out to be legal cannot be found fault with. However, as far as it declares the proceedings under reference to be barred u/s 59 of the said Act as well as it considers the continuation of lock-out after 27th January, 1984 to be legal and justified are hereby quashed and set aside. The reference was perfectly maintainable and was not barred u/s 59 of the said Act and the lock-out after the date of 27th January, 1984 was neither legal nor justified. Consequently, the workmen would be entitled for full wages after January, 1984 till the date of lawful termination of their services or the lawful closure of the undertaking alongwith the closure compensation, as the case may be. Rule is made absolute accordingly, with costs.

50. At this stage, learned Counsel for respondent No. 1 prays for stay of the judgment passed today. Same is objected by the petitioner. However, I am inclined to grant stay for the period of eight weeks from today. Order accordingly.